development or subdivision, and the development or subdivision will, insofar as possible and reasonable in light of its purpose:

(i) retain the shoreline and the waters in their natural condition,

(ii) allow continued access to the waters and the recreational opportunities provided by the waters,

(iii) retain or provide vegetation which will screen the development or subdivision from the waters, and

(iv) stabilize the bank from erosion, as necessary, with vegetation cover.

(G) **Wetlands.** A permit will be granted whenever it is demonstrated by the applicant, in addition to other criteria, that the development or subdivision will not violate the rules of the water resources board, as adopted under section 905(9) of this title, relating to significant wetlands.

(2) Does have sufficient water available for the reasonably foreseeable needs of the subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

(7) Will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services.

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

(A) Necessary wildlife habitat and endangered species. A

permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species, and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species, or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied, or

(iii) a reasonable acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

(9) **Is in conformance with a duly adopted capability and development plan, and land use plan when adopted.** However, the legislative findings of sections 7(a)(1) through 7(a)(19) of this act shall not be used as criteria in the consideration of applications by a district commission or the environmental board.

(A) **Impact of growth.** In considering an application, the district commission or the board shall take into consideration the growth in population experienced by the town and region in question and whether or not the proposed development would significantly affect their existing and potential financial capacity to reasonably accommodate both the total growth and the rate of growth otherwise expected for the town and region and the total growth and rate of growth which would result from the development if approved. After considering anticipated costs for education, highway access and maintenance, sewage disposal, water supply, police and fire services and other factors relating to the public health, safety and welfare, the district commission or the board shall impose

conditions which prevent undue burden upon the town and region in accommodating growth caused by the proposed development or subdivision. Notwithstanding section 6088 of this title the burden of proof that proposed development will significantly affect existing or potential financial capacity of the town and region to accommodate such growth is upon any party opposing an application, excepting however, where the town has a duly adopted capital improvement program the burden shall be on the applicant.

(B) **Primary agricultural soils.** A permit will be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not significantly reduce the agricultural potential of the primary agricultural soils; or,

(i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the primary agricultural soils to uses which will significantly reduce their agricultural potential; and

(ii) there are no nonagricultural or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage; and

(iv) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential.

(C) **Forest and secondary agricultural soils.** A permit will be granted for the development or subdivision of forest or secondary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable

criteria, either, the subdivision or development will not significantly reduce the potential of those soils for commercial forestry, including but not limited to specialized forest uses such as maple production or Christmas tree production, of those or adjacent primary agricultural soils for commercial agriculture; or

(i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the forest or secondary agricultural soils to uses which will significantly reduce their forestry or agricultural potential; and

(ii) there are no nonforest or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of forestry and agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

(D) **Earth resources.** A permit will be granted whenever it is demonstrated by the applicant, in addition to all other applicable criteria, that the development or subdivision of lands with high potential for extraction of mineral or earth resources will not prevent or significantly interfere with the subsequent extraction or processing of the mineral or earth resources.

(E) **Extraction of earth resources.** A permit will be granted for the extraction or processing of mineral and earth resources, including fissionable source material:

(i) when it is demonstrated by the applicant that, in addition to all other applicable criteria, the extraction or processing operation and the disposal of waste will not have an unduly harmful impact upon the environment or surrounding land uses and development; and

(ii) upon approval by the district commission or the board of a site rehabilitation plan which insures that

upon completion of the extracting or processing operation the site will be left by the applicant in a condition suited for an approved alternative use or development. A permit will not be granted for the recovery or extraction of mineral or earth resources from beneath natural water bodies or impoundments within the state, except that gravel, silt and sediment may be removed pursuant to the regulations of the water resources board, and natural gas and oil may be removed pursuant to the rules of the natural gas and oil resources board.

(F) **Energy conservation.** A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and incorporate the best available technology for efficient use or recovery of energy.

(G) **Private utility services.** A permit will be granted for a development or subdivision which relies on privately-owned utility services or facilities, including central sewage or water facilities and roads, whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the privately-owned utility services or facilities are in conformity with a capital program or plan of the municipality involved, or adequate surety is provided to the municipality and conditioned to protect the municipality in the event that the municipality is required to assume the responsibility for the services or facilities.

(H) **Costs of scattered development.** The district commission or board will grant a permit for a development or subdivision which is not physically contiguous to an existing settlement whenever it is demonstrated that, in addition to all other applicable criteria, the additional costs of public services and facilities caused directly or indirectly by the proposed development or subdivision do not outweigh the tax revenue and other public benefits of the development or subdivision such as increased employment opportunities or the provision of needed and balanced housing accessible to existing or planned

employment centers.

(J) **Public utility services.** A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

(K) **Development affecting public investments.** A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, airports, waste disposal facilities, office and maintenance buildings, fire and police stations, universities, schools, hospitals, prisons, jails, electric generating and transmission facilities, oil and gas pipe lines, parks, hiking trails and forest and game lands, when it is demonstrated that, in addition to all other applicable criteria, the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in the facility, service, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to the facility, service, or lands.

(L) **Rural growth areas.** A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.

(10) **Is in conformance with any duly adopted local or regional plan or capital program under chapter 117 of Title 24.**

(b) At the request of an applicant, or upon its own motion, the district commission or the board shall consider whether to review any criterion or group of criteria of subsection (a) of this section before proceeding to or continuing to review other criteria. This request or motion may be made at any time prior to or during the proceedings. The district commission or the board, in its sole discretion, shall, within 20 days of the completion of deliberations on the criteria that are the subject of the request or motion, either issue its findings and decision thereon, or proceed to a consideration of the remaining criteria. If the district commission or the board first issues a partial decision under this subsection, the applicant or a party may appeal that decision within 30 days under section 6089 of this title, or may appeal it after the final decision on the complete application. If the applicant or party has not taken a prior appeal of a partial decision under this subsection with respect to particular criteria, then any findings on the complete application, relating to those criteria, may be appealed under section 6089 of this title.

(c) A permit may contain such requirements and conditions as are allowable within the proper exercise of the police power and which are appropriate with respect to (1) through (10) of subsection (a), including but not limited to those set forth in section 4407(4), (8) and (9), 4411(a)(2), 4415, 4416 and 4417 of Title 24, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule.

(d) The board may by rule allow the acceptance of a permit or permits or approval of any state agency with respect to (1) through (5) of subsection (a) or a permit or permits of a specified municipal government with respect to (1) through (7) and (9) and (10) of subsection (a), or a combination of such permits or approvals, in lieu of evidence by the applicant. The board shall accept determinations issued by a development review board under the

provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts. The acceptance of such approval, positive determinations, permit or permits shall create a presumption that the application is not detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. The acceptance of negative determinations issued by a development review board under the provisions of 24 V.S.A. § 4449, with respect to local Act 250 review of municipal impacts shall create a presumption that the application is detrimental to the public health and welfare with respect to the specific requirement for which it is accepted. Any determinations, positive or negative, under the provisions of 24 V.S.A. § 4449 shall create presumptions only to the extent that the impacts under the criteria are limited to the municipality issuing the decision. Such a rule may be revoked or amended pursuant to the procedures set forth in 3 V.S.A., chapter 25, the Vermont Administrative Procedure Act. The board shall not approve the acceptance of a permit or approval of such an agency or a permit of a municipal government unless it satisfies the appropriate requirements of subsection (a) of this section.--1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970; amended 1973, No. 85, § 10; 1973, No. 195 (Adj. Sess.), § 3, eff. April 2, 1974; 1979, No. 123 (Adj. Sess.), § 5, eff. April 14, 1980; 1981, No. 240 (Adj. Sess.), § 7, eff. April 28, 1982; 1985, No. 52, § 4, eff. May 15, 1985; 1985, No. 188 (Adj. Sess.), § 5; 1987, No. 76, § 18; 1989, No. 234 (Adj. Sess.), § 1, No. 280 (Adj. Sess.), § 13. Amended 1993, No. 232 (Adj. Sess.), § 32, eff. March 15, 1995.

§ 6086a. Generators of radioactive waste

No land use permit will be issued for a development which generates low-level radioactive waste unless it shows that it will have access to a low-level radioactive waste disposal facility and that the facility is expected to have sufficient capacity for the waste.--Added 1989, No. 296 (Adj. Sess.), § 7, eff. June 29, 1990.

§ 6087. Denial of application

(a) No application shall be denied by the board or district commission unless it finds the proposed subdivision or development

detrimental to the public health, safety or general welfare.

(b) A permit may not be denied solely for the reasons set forth in subdivisions (5), (6) and (7) of section 6086(a) of this title. However, reasonable conditions and requirements allowable in section 6086(c) of this title may be attached to alleviate the burdens created.

(c) A denial of a permit shall contain the specific reasons for denial. A person may, within 6 months, apply for reconsideration of his permit which application shall include an affidavit to the district commission and all parties of record that the deficiencies have been corrected. The district commission shall hold a new hearing upon 25 days notice to the parties. The hearing shall be held within 40 days of receipt of the request for reconsideration.--1969, No. 250 (Adj. Sess.), § 12, eff. April 4, 1970.

§ 6088. Burden of proof

(a) The burden shall be on the applicant with respect to subdivisions (1), (2), (3), (4), (9) and (10) of section 6086(a) of this title.

(b) The burden shall be on any party opposing the applicant with respect to subdivisions (5) through (8) of section 6086(a) of this title to show an unreasonable or adverse effect.--1969, No. 250 (Adj. Sess.), § 13, eff. April 4, 1970.

§ 6089. Appeals

(a)(1) An appeal from the district commission shall be to the board and shall be accompanied by a fee prescribed by rule of the board, which shall be reasonably related to the costs associated with hearing the appeal.

(2) An appellant to the board, under this section, shall file with the notice of appeal a statement of the issues to be addressed in the appeal, a summary of the evidence that will be presented, and a preliminary list of witnesses who will testify on behalf of the appellant.

(3) The board shall hold a de novo hearing on all findings requested by any party that files an appeal or cross-appeal, according to the rules of the board.

(4) Notice of appeal shall be filed with the board within 30 days. The board shall notify the parties set forth in section 6085(c) of this title of the filing of any appeal. The board shall proceed as in section 6085(b) and (c) of this title and treat the applicant pursuant to section 814 of Title 3.

(b) An appeal from a decision of the board under subsection (a) of this section shall be to the supreme court by a party as set forth in section 6085(c) of this title.

(c) No objection that has not been urged before the board may be considered by the supreme court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(d) An appeal from the board will be allowed for all usual reasons, including the unreasonableness or insufficiency of the conditions attached to a permit. An appeal from the district commission will be allowed for any reason except no appeal shall be allowed when an application has been granted and no preliminary hearing requested.--1969, No. 250 (Adj. Sess.), § 14, eff. April 4, 1970; amended 1973, No. 85, § 12; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 52, § 1, eff. May 15, 1985; 1987, No. 76, § 10a. Amended 1993, No. 232 (Adj. Sess.), § 34, eff. March 15, 1995.

§ 6090. Recording; duration and revocation of permits

(a) In order to afford adequate notice of the terms and conditions of land use permits, permit amendments and revocations of permits, they shall be recorded in local land records. Recordings under this chapter shall be indexed as though the permittee were the grantor of a deed.

(b)(1) Any permit granted under this chapter for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet, shall be for a specified period determined by the board in accordance with the rules adopted under this chapter as a reasonable projection of the time during which the land will remain suitable for use if developed or subdivided as contemplated

in the application, and with due regard for the economic considerations attending the proposed development or subdivision. Other permits issued under this chapter shall be for an indefinite term, as long as there is compliance with the conditions of the permit.--Amended 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.

(b)(2) Expiration dates contained in permits issued before July 1, 1994 (involving developments that are not for extraction of mineral resources, operation of solid waste disposal facilities, or logging above 2,500 feet) are extended for an indefinite term, as long as there is compliance with the conditions of the permits. Added 1993, No. 232 (Adj. Sess.), § 35, eff. June 21, 1994.

(c) A permit may be revoked by the board in the event of violation of any conditions attached to any permit or the terms of any application, or violation of any rules of the board.--1969, No. 250 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1985, No. 32.

§ 6091. Renewals and nonuse

(a) Renewal. At the expiration of each permit, it may be renewed under the same procedure herein specified for an original application.

(b) Nonuse of permit. Nonuse of a permit for a period of three years following the date of issuance shall constitute an abandonment of the development or subdivision and the permit shall be considered expired. For purposes of this section, for a permit to be considered "used," construction must have commenced and substantial progress towards completion must have occurred within the three-year period, unless construction is delayed by litigation or proceedings to secure other permits or to secure title through foreclosure, or unless, at the time the permit is issued or in a subsequent proceeding, the district commission or board provides that substantial construction may be commenced more than three years from the date the permit is issued.--1991, No.111, § 2, eff. June 28, 1991; Amended, 1993, ,No. 232 (Adj. Sess) § 36, eff. June 21, 1994.

(c) Extensions. If the application is made for an extension

prior to expiration the district commission may grant an extension and may waive the necessity of a hearing.--1969, No. 250 (Adj. Sess.), § 7, eff. April 14, 1970.

(d) Completion dates for developments and subdivisions. Permits shall include dates by which there shall be full or phased completion. The board, by rule, shall establish requirements for review of those portions of developments and subdivisions that fail to meet their completion dates, giving due consideration to fairness to the parties involved, competing land use demands, and cumulative impacts on the resources involved. If completion has been delayed by litigation, proceedings to secure other permits, proceedings to secure title through foreclosure, or because of market conditions, the district commission or board shall provide that the completion dates be extended for a reasonable period of time.-- Added, 1993, No. 232 (Adj. Sess), § 36, eff. June 21, 1994.

§ 6092. Construction

In the event that the federal government preempts part of the activity regulated by this chapter, this chapter shall be construed to regulate activity that has not been preempted.--Added 1979, No. 123 (Adj. Sess.), § 7, eff. April 14, 1980.

Subchapter 5. Waste facility panel

§ 6101. Waste facility panel; jurisdiction; rules; fees

(a) A waste facility panel of the environmental board is created. The panel shall consist of the chair of the environmental board, who shall also be chair of the panel, and four members appointed by the governor and confirmed by the senate. The four members other than the chair shall include at least one current or past member of the water resources board and at least one current or past member of the environmental board. Members other than the chair shall be appointed for terms of four years and shall be entitled to per diem and reimbursement for all necessary and actual expenses. A vacancy shall be filled for the unexpired term in the same manner as the initial appointment

(b) The waste facility panel shall have exclusive jurisdiction to review decisions and hear and determine appeals as provided in

this subchapter.

(c) The waste facility panel shall operate under the rules of the environmental board to the extent the board's rules are consistent with this subchapter. The panel may adopt additional rules necessary to carry out this subchapter.

(d) A request for review or an appeal shall be filed with the waste facility panel within 30 days of the secretary's determination or the district commission's decision. The filing shall be accompanied by a fee. The amount, deposit and disbursement shall be as provided for fees assessed for appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

(e) In cases involving an appeal from a decision of a district commission or the agency of natural resources pursuant to this subchapter, the chair may assign current or alternate members of the environmental board to sit on cases when fewer than five panel members are available to serve. Added 1993, No. 82, § 5, eff. July 1, 1993.

§ 6102. Parties

(a) The applicant, the landowner if the applicant is not the landowner, the state, the solid waste management district, the municipality and municipal and regional planning commissions in which the waste facility is located and any adjacent solid waste management district, municipality and municipal and regional planning commissions if the waste facility is located on a boundary shall be parties in any proceeding before the waste facility panel.

(b) An owner or resident of adjoining property may participate in hearings and present evidence to the extent the waste facility would have a direct effect on that property.

(c) In addition to parties under subsections (a) and (b) of this section, in respect to proceedings involving a provisional certification or a determination of the secretary of natural resources, a person shall be entitled to participate as a party under the standards for party status in Rule 24 of the Vermont Rules of Civil Procedure.

(d) In addition to parties under subsections (a) and (b) of

this section, in respect to proceedings involving a decision of a district environmental commission, a person shall be entitled to participate as a party as provided in the statutes and rules applicable to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990; Amended 1991, No. 109, § 4, eff. June 28, 1991.

§ 6103. Review of provisional certifications

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a provisional certification under section 6605d of this title. A review under this section shall take precedence over all other matters before the panel.

(b) If the panel finds that any party has established by clear and convincing evidence that the basis for the secretary's determination is not supported, the panel shall deny the provisional certification or issue a provisional certification with conditions, requirements or restrictions consistent with subdivision 6605d(c)(5) of this title.

(c) The panel shall hold a hearing or pre-hearing conference within 20 days of the request for review and shall issue its decision within 20 days of the date the hearing on the matter is adjourned.

(d) A request for review may, but shall not automatically stay the determination of the secretary. An application for a stay shall be acted upon within three days of its receipt.--Added 1989, No. 218 (Adj. Sess.) § 3.

§ 6103a. Review certificates of need

(a) The panel shall have jurisdiction to review a determination of the secretary with respect to a certificate of need issued under section 6606a of this title.

(b) The findings, and the conditions, requirements or restrictions in the certificate of need shall be presumed to be valid, but may be rebutted by clear and convincing evidence. If rebutted, the panel shall make its own findings, and establish conditions, requirements or restrictions, with respect to the

criteria set forth in section 6606a of this title.--Added 1989, No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6104. Review of agency determinations

(a) The panel shall have jurisdiction to review a determination of the secretary of natural resources with respect to a permit, certification, classification action, or endangered species variance for a solid waste management facility. Amended 1993, No. 92, § 11, eff. July 1, 1993.

(b) Review under this section shall be de novo.

(c) A request for review may, but shall not automatically stay the determination of the secretary.

(d) This section shall not apply to provisional certifications issued under section 6605d of this title.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6105. Appeals of district commission decisions

Appeals of a decision of a district environmental commission in respect to a waste management facility shall be to the panel. Such appeals shall be governed by the provisions and procedures applicable to appeals to the environmental board.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6106. Consolidation of act 250 and agency review proceedings

(a) If the panel is requested to review a determination of the secretary with respect to a permit, certification, air pollution order, classification action, or endangered species variance for a waste management facility which is also a development under this chapter, the panel shall not commence its review until the district commission has issued its final decision.

(b) If a decision of a district commission is appealed and the panel is requested to review a determination of the secretary with respect to the same waste management facility, the panel shall consolidate the proceedings.

(c) If requested by a party, a district commission shall first consider all criteria under subsection 6086(a) of this title, other

than those for which a permit from the secretary of natural resources creates a presumption of a positive finding.--Added 1989, No. 218 (Adj. Sess.), § 3; No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6107. Appeals to the supreme court

Appeals from decisions of the waste facility panel shall be to the supreme court:

(1) pursuant to section 6089 of this title and the applicable rules of the environmental board, with respect to parties under subsections 6102(a), (b) and (d) of this title;

(2) pursuant to the Vermont rules of appellate procedure, with respect to all other parties.--Added 1989, No. 218 (Adj. Sess.), § 3, No. 282 (Adj. Sess.), § 8, eff. June 22, 1990.

§ 6108. Transition authority

The waste facility panel may transfer and take jurisdiction over any appeal concerning a waste management facility that is pending, on the effective date of this subchapter, before the water resources board or the environmental board upon motion of any party when transfer would serve the public interest and not impose undue hardship; except that the panel may not take jurisdiction over any appeal to the environmental board that was filed before January 1, 1990.--Added 1989, No. 218 (Adj. Sess.), § 3.

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2. The project shall be completed, maintained, and operated as set forth in the Findings of Fact and Conclusions of Law #7C0467-5, in accordance with the plans and exhibits on file with the District Environmental Commission, and in accordance with the conditions of this permit. No changes shall be made in the project without the written approval of the District Environmental Commission.

3. By acceptance of the conditions of this permit without appeal, the permittees confirm and agree for themselves and all assigns and successors in interest that the conditions of this permit shall run with the land and the land uses herein permitted, and will be binding upon and enforceable against the permittees and all assigns and successors in interest.

4. The District Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require that the permit holder file an affidavit certifying that the project is being completed in accordance with the terms of the permit.

5. By acceptance of this permit the permittees agree to allow representatives of the State of Vermont access to the property covered by the permit, at reasonable times, for the purpose of ascertaining compliance with Vermont environmental and health statutes and regulations and with this permit.

6. The project as approved allows for the installation of telecommunications equipment at the Burke Mountain Communications Facility consisting of one, eight foot diameter, microwave dish (at the 55 foot tower elevation) to the proposed 60 foot communications tower and eight, fourteen foot, whip antennae (at the 60 foot tower elevation) to an existing 75 foot communications tower. No additional microwave dishes, height extensions, additional antennas, or additional equipment shall be installed on the towers at this facility prior to review and approval by the District Coordinator or the District Commission under applicable Environmental Board Rules.

7. The microwave dish cover shall be of a color to blend in with the existing tower infrastructure.

8. Vermont ETV, Inc. and the State of Vermont Department of Forests, Parks and Recreation shall submit a proposed approach and outline for a communications site Master Plan to the District 7 Commission no later than July 31, 1995.

9. The District Environmental Commission reserves the right to evaluate and impose reasonable additional conditions necessary to ensure no undue adverse impact with respect to Criteria 1, Air Pollution, as it relates to radio frequency radiation. The Commission reserves this right for a period of time commencing and expiring with the permit.

10. Construction activities are allowed between April 15 and September 15 only, in any given year.

11. Each prospective purchaser of this tract shall be shown a copy of the approved plot plan, and the Land Use Permit before any written contract of sale is entered into.

12. Notwithstanding any other provision herein, this permit shall expire three years from the date of issuance if the permittees have not commenced substantial construction in accordance with 10 V.S.A. § 6091(b) (amended June 21, 1994).

13. Pursuant to 10 V.S.A. § 6090(b) (effective June 21, 1994), this permit amendment is hereby issued for an indefinite term, as long as there is compliance with the conditions herein.

Dated at St. Johnsbury, Vermont, this 19th day of June, 1995.

BY Edward Newell

Edward Newell, Chairperson
District Environmental
Commission #7

Other members participating in this decision:

Jill Broderick

Michele Boomhower

Michele Boomhower
Assistant District Coordinator

(C:\WP51\FILES\7C0467-5.ALUP)

STATE OF VERMONT
DISTRICT ENVIRONMENTAL COMMISSION #7

RE: Atlantic Cellular Co., L.P. 15 Westminster St. Suite 830 Providence RI 02903 and Vermont ETV, Inc. 88 Ethan Allen Avenue Colchester, VT 05446 and State of Vermont Dept. of Forest, Parks, and Recreation 103 South Main Street Waterbury, VT 05676	) Application #7C0467-5) Findings of Fact and) Conclusions of Law) 10 V.S.A., Chapter 151) (Act 250)

INTRODUCTION TO THE FINDINGS OF FACT:

On May 8, 1995, an application for an Act 250 Permit was filed by Atlantic Cellular Co., L.P., Vermont ETV, Inc., and State of Vermont Dept. of Forest, Parks, and Recreation for a project generally described as the installation of telecommunications equipment at the Burke Mountain Communications Facility consisting of one, eight foot diameter, microwave dish (at the 55 foot tower elevation) to the proposed 60 foot communications tower, eight, fourteen foot, whip antennae (at the 60 foot tower elevation) to an existing 75 foot communications tower, and the installation of communications equipment in an approved addition to the existing Vermont ETV, Inc. equipment shelter. The project is located atop Burke Mountain in the Town of Burke, Vermont.

The tract of land consists of 1,179 acres with 0.5 acres involved in the project area. The applicant's legal interests are ownership in fee simple.

Under Act 250, projects are reviewed based on the ten criteria of 10 V.S.A., Section 6086(a)1-10. Before granting a permit, the Board or District Commission must find that the project complies with these criteria and is not detrimental to the public health, safety or general welfare.

Decisions must be stated in the form of Findings of Fact and Conclusions of Law. The facts we have relied upon are contained in the documents on file identified as Exhibits 1 through 21 and the evidence received at a site visit and a hearing held on May 24, 1995.

Parties to this application are:

(A) The Applicants by Richard Craig, Elizabeth Kohler, Esq., and Sally Greene.

(B) The Municipality of Burke.

(C) The Northern Vermont Development Association.

(D) The Agency of Natural Resources.

FINDINGS OF FACT:

Prior to taking evidence with regard to the ten Criteria of 10 V.S.A., Section 6086(a), all parties agreed that the applicant through submission of the application material has met the burden of proof with respect to:

1A	Headwaters	9A	Impact of Growth
1B	Waste Disposal	9B&C	Agricultural Soils
1C	Water Conservation	9D&E	Earth Resources
1D	Floodways	9F	Energy Conservation
1E	Streams	9G	Private Utilities
1F	Shorelines	9H	Cost of Scattered Development
1G	Wetlands		
2&3	Water Supplies	9J	Public Utilities
4	Soil Erosion	9K	Public Investment
5	Transportation	9L	Rural Growth Area
6	Educational Services	10	Conformance with Local and Regional Plans
7	Municipal Services		
8A	Wildlife Habitat and Endangered Species		

Parties, therefore, waived the issuance of written findings concerning these criteria as the application shall serve as Findings of Fact.

Jurisdiction over this application is conferred by 10 V.S.A., Chapter 151 because the project is a commercial project involving more than ten acres.

The following written Findings of Fact are limited to Criteria:

1 Air Pollution
8 Aesthetics, Scenic Beauty, Historic Sites, and Natural Areas

In making the following findings, we have summarized the statutory language of the 10 Criteria of 10 V.S.A., Section 6086(a):

SECTION 6086(a)(1) AIR POLLUTION:

The Commission finds that this project will not result in undue air pollution.

1. Radio Frequency Radiation (RFR) emissions are recognized by the Communications Industry to be a potential health risk as indicated by the Federal Communications Commission's (FCC) licensing standards and adherence to the American National Standards Institutes (ANSI) guidelines with regard to RFR emissions. Testimony.

2. According to, Final Report: Survey, Investigation & Analysis of Communications Facilities on 3 Vermont Owned Mountaintops, Vermont Agency of Natural Resources, Department of Forests, Parks, and Recreation prepared by Raymond C. Trott, the Burke Mountain Communications Facility has a potential problem with the level of RFR emissions in specified locations, as measured by the ANSI/EEE C95.1-1992 standards, which are utilized in the FCC licensing process. The study indicates that one of the areas which exceeds the established standard is located immediately outside of the State of Vermont fire tower platform. Testimony.

3. The fire tower and platform are open to the public for recreational purposes. Testimony.

4. The installation of Atlantic Cellular's communications equipment will amount to a small, but contributory, increase in the level of RFR emissions, generated through an increase in transmitter power, at the Facility (ie. the Vermont ETV television transmitter emits 25,000 watts of transmitter power, the Atlantic Cellular equipment will produce an additional 80 watts of transmitter power). Testimony.

Discussion:

The Commission has relied upon the testimony given and the material submitted regarding the issue of RFR emissions at the Burke Mountain Facility. The Commission is primarily concerned with the compatibility of the current mixed use of the Facility as a communications site and a public recreation site, as these two activities relate to the RFR emissions at the site.

While the Commission recognizes the existence of, and adherence to, FCC licensing protocols regarding RFR emissions, the Commission, in looking at the cumulative impact of RFR emission levels at the site, and is presently concerned that a health hazard may exist in specific locations. In order to ascertain that public health, safety, and welfare are being served, more information needs to be collected, and made available to the Commission. The Commission may be required to impose appropriate conditions to assure safe, continued use of the site for recreational and communications purposes.

The Commission realizes that the bulk of the burden with regard to the management of RFR emissions falls upon the land owner, the State of Vermont, and the controlling lease holder, Vermont ETV, Inc. Under the original Land Use Permit, 7C0467, Condition #3, states:

> The District Environmental Commission maintains continuing jurisdiction during the lifetime of the permit and may periodically require certification that the project is being maintained in accordance with the terms of the permit.

The primary concern of the Commission is that, through a slow but steady increase in the number and type of communication towers, dishes, whip antennae, etc., key mountain top sites such as Burke could slip beyond the threshold of what is acceptable from both an aesthetic and safety standpoint under the relevant criteria. Particularly where mountain top use for communication purposes co-exists with recreational use, such as on Burke Mountain, the incremental growth in radiation generating communication equipment poses a unique threat. Another way to look at it is that such growth poses a unique planning challenge for the managers of such mountain tops. When we request a "master plan" for a mountain top, what we are primarily interested in is specific information regarding how, over the next 5 to 10 years, communications growth at the site will be managed so as not to create potential health and safety hazards to recreational users of the site and how plans will minimize negative aesthetic impacts, such that the use of the site remains in conformance with the relevant criteria.

The Commission, in light of the issue of RFR emissions, will thus seek to pursue continued conformance with Criteria 1, Air Pollution, by requiring the State of Vermont, Department of Forest, Parks, and Recreation, and Vermont ETV, Inc., to submit a Master Plan for the Facility. The co-applicants shall submit to the Commission, no later than July 31, 1995, a proposed approach and outline for addressing the following Master Plan components: the current level of compliance at the Facility with regards to the ANSI/EEE C95.1-1992 standards and the plans for development of a communications infrastructure at the Facility, with regard to RFR emissions conformance. A supplemental report to expand upon the findings produced in the Trott study of the Burke Mountain Facility may be required or another such comparable examination. The proposed approach and outline should include a time line with final Master Plan submissions to be made no later than July 31, 1996.

The Commission, through permit condition, retains the right to place further conditions upon Atlantic Cellular, Vermont ETV, Inc., and the State of Vermont, Department of Forest, Parks, and Recreation, under Criterion 1. The Commission may look to all of the contributors of RFR emissions at the Facility in determining appropriate remediation if unsafe RFR emission levels are determined to exist. Such conditions may seek to impose a financial responsibility and/or an emissions reduction to address air pollution generated by RFR emissions if such problems are identified, in the future. Cost share and emissions reductions could be determined on a pro-rated basis, by user RFR emissions output (similar to pro-rated emissions reductions required by the FCC at facilities found to be operating above the accepted standards).

SECTION 6086 (8) AESTHETICS, SCENIC BEAUTY, HISTORIC SITES AND NATURAL AREAS:

The Commission finds that the project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

1. The project will be located on two communications towers, one proposed and permitted 60 foot tower and one existing 75 foot tower, on the summit of Burke Mountain. Exhibit 6.

2. Burke Mountain has been designated a state-owned mountaintop communications site by the Vermont State Legislature (10 V.S.A. 2606a). Exhibit 10.

3. The Burke Mountain Communications Facility is currently a multi-use communications facility housing television, radio, and telecommunications transmitting and receiving equipment. Testimony.

4. The fabric which will cover the dish antennae can be painted a variety of colors to blend in with the existing surfaces and surroundings. Testimony.

5. The equipment to be installed is similar to the pre-existing equipment at the site. Exhibit 11.

6. There shall be no lighting of the telecommunications equipment located on the towers. Exhibit 11.

7. Burke Mountain possesses a paved toll road, terminating at a scenic parking area approximately 100 yards below the mountain summit, a ski area which utilizes the parking area and toll road, and a State maintained hiking trail which accesses the fire tower at the summit. Testimony.

8. The State of Vermont, Department of Forest, Parks, and Recreation Department is committed to the recreational use of the top of Burke Mountain and the surrounding 22,000 acres which are owned managed by the State of Vermont. Testimony.

Discussion:

The Commission finds the area surrounding the summit of Burke Mountain to be an active recreational site. The summit area is the ultimate destination for skiers, hikers, and other seasonal visitors. The area is seasonally accessible via the paved toll road which ascends the mountain to a scenic overlook near the ski lift terminus. A State owned and maintained hiking trail passes over the top of Burke Mountain, winding along the mountain top, and providing public access to the fire tower. The view from the tower allows visitors to take in a panoramic vista of distant areas. For the traveling public, at lower elevations, Burke Mountain can be seen to contain a mix of forest resources, commercial ski area development, and a communications facility.

The Commission finds the installation of the proposed telecommunications equipment to be consistent with the pre-existing equipment located on the summit of Burke Mountain. The type and size of the proposed equipment would not be substantially different from the pre-existing equipment. The location of the equipment at the Communications Facility will allow Atlantic Cellular to meet their technical requirements for an effective telecommunications network while not imposing an adverse or undue impact on the scenic or natural beauty of the surrounding area. The Commission will, however, condition the permit to require the covering on the microwave dish to be painted in a manner which allows it to blend in with the background. The Commission will also retain jurisdiction over the replacement of the equipment which either increases the size (including diameter) or height of the equipment.

The applicant has taken steps to avoid developing a new telecommunications site in a pristine area by selecting an existing site which the Vermont Legislature has chosen to designate as a State Communications Facility. The site is pre-existing, there is currently access to the site, the site will require no clearing of trees, the site meets the technical criteria consistent with the operation of a telecommunications network, and the installation of the size and type of equipment proposed will not be a significant increase over the pre-existing equipment. The Commission finds this approach to site selection to be consistent with retaining the aesthetic and natural beauty sought to be protected under this statute.

CONCLUSIONS OF LAW:

Based upon the foregoing Findings of Fact, it is the conclusion of this District Environmental Commission that the project described in the application referred to above, if completed and maintained in conformance with all of the terms and conditions of that application, and of Land Use Permit 7C0467-5 will not cause or result in a detriment to public health, safety or general welfare under the criteria described in 10 V.S.A., Section 6086(a).